

No. 9/7/86-6Lab./5767.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Haryana Oxygen Ltd., Satrod (Hissar):—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 145 of 1983

SAT NARAIN, WORKMAN AND THE MANAGEMENT OF M/S HARYANA OXYGEN LTD., SATROD (HISAR)

Present :—

Shri T. C. Gupta, A. R. for the workman.

Shri O. P. Jain, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Sat Narain and the management of M/s Haryana Oxygen Ltd, Satrod (Hisar) to this Court, for adjudication,—*vide Haryana Government Gazette* notification No. ID/48196—200, dated 15th September, 1983 :—

Whether the termination of service of Shri Sat Narain, was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties, the parties appeared. The case of the petitioner is that he was appointed as Operator in the year 1979 but the respondent choose to terminate his services unlawfully with effect from 19th May, 1983 on the trumped up charges of committing theft, regarding which, no report was lodged to the police and that order of termination was passed because the respondent suspected the petitioner to be a union activist and so, the order of termination was illegal and unlawful.

3. In the reply filed by the respondent, it is alleged that the petitioner was initially appointed as Helper with effect from 3rd July, 1979 and later on promoted as Operator in the month of December, 1982. It is further alleged that the applicant was caught red handed while committing theft of a tube on 3rd May, 1983, which was the property of the respondent and the petitioner confessed his guilt in writing and tendered unconditional apology and as such, the order of dismissal passed against him was fully justified because by committing theft the petitioner made himself liable to the extreme penalty of dismissal and no domestic probe was required to be conducted as the petitioner admitted his guilt in writing.

4. On the pleadings of the parties, the following issue settled for decision by me on 7th August, 1984 :—

(1) As per terms of reference.

5. The petitioner appeared as WW-1 and the management examined Shri Niranjan Lal, Manager as MW-1. MW-2 is Shri Yash Pal Chand Jain, Handwriting and Finger Print Expert. My findings on the issue framed are as below :—

Issue No. 1.

6. To prove the act of theft Shri Niranjan Lal, Manager of the respondent company stated that in the month of May, 1983 Shri R. K. Pant was the Manager of the respondent company and he was the Accountant and the petitioner was working as a Operator and that the petitioner was caught red handed while committing theft of a tube light who confessed his guilt in writing and begged that no report be lodged to the police. Confession memo is Ex. MW-1/A and that this act of the petitioner was brought by him to the notice of the management, upon which, order of termination was passed and the petitioner was paid his dues through money-order. Since the petitioner denied his signatures upon the alleged confession of memo placed on record in original, the management examined Handwriting and Finger Print Expert Shri Yash Pal Chand Jain as MW-2, who after comparing the alleged signatures of the petitioner on the memo Ex. MW-1/A with his standard signatures on applications Ex. X-1, X-2, X-3, X-4, X-5 and X-6. These documents are applications filed by the petitioner from time to time to the respondent. Shri Jain opined that the signatures on the memo Ex.

MW-1/A and that of the documents X-1, to E-6 are in the hand of one and the same person. To wriggle out of this unhappy position the petitioner stated that these applications were got scribed from some-body else, who signed the same on his behalf. This story of the petitioner does not go home. This false stand has been taken by the petitioner in his over-zeal to deny his confessional memo Ex. MW-1/A. Besides that the management has placed on record the salary sheets for the month of July, 1979 to July 1980. Wages were paid to the petitioner against his signatures on the said salary sheets. Even from the casual examination with a naked eye it appears that the signatures of the petitioner on the salary sheets tally with his signatures upon the confession memo Ex. MW-1/A. So, it does not lie in the mouth of the petitioner to allege that the confession memo Ex. MW-1/A does not bear his signature. On behalf of the respondent 1982 II LLJ 7 between Dr. S and Hindustan Aeronautics Ltd. and another was cited to prove the contention that in case of accepted misconduct a domestic enquiry need not be held. Another authority cited was 1982 II LLJ 166 between Krishan Dev Puri and Union of India and others. Reliance was also placed upon 1984 S.C. Cases 21, Jai Bhagwan V/S. The Management of Ambala Central Co-operative Bank Ltd. and another. These authorities were handed out on facts entirely different from the facts of the case in hand. Now, the question would be as to whether the extreme penalty of dismissal was called for the proved act of misconduct. In my opinion, this harsh punishment was uncalled for, because the same was glaringly disproportionate in relation to the proved misconduct, specially when the petitioner confessed his guilt and prayed for lenient treatment, though he tried to wriggle out of his tendered apology in his over-zeal to build up a foolproof defence. So, interference by this Court under section 11-A of the Industrial Disputes Act, 1947 is called for. So, the petitioner is ordered to be reinstated but he cannot be awarded full back wages, because he must feel the pinch for the misconduct committed by him. So, I award him back wages to the extent of 25%. So, the petitioner is ordered to be reinstated with continuity of service and backwages to the extent of 25%. The reference is answered and returned accordingly with no order as to cost.

Dated the 12th June, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.
Camp Court, Hisar.

Endorsement No. 145-83/852, dated 24th June, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hisar.

The 26th August, 1986

No. 9/7/86-6Lab./6845.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the Management of (i) Transport Commissioner, Haryana Chandigarh (ii) Haryana Roadways, Hissar.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 3 of 85.

SHRI RAJ PAL, WORKMAN AND THE MANAGEMENT OF (i) TRANSPORT COMMISSIONER, HARYANA, (ii) HARYANA ROADWAYS, HISSAR.

Shri S. S. Gupta, A.R., for the Workman.

Shri Jagbri Singh, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Raj Pal and the management of (i) Transport Commissioner, Haryana, (ii) Haryana Roadways, Hissar, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 192-97, dated 2nd January, 1985:—

Whether the termination of services of Shri Raj Pal is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor since 17th September, 1981 and one Shri Sunder Lal lodged a false complaint against him that

while checking bus number 5262 bound from Delhi to Bikaner and number 4452 from Hissar to Pilani, he found that the petitioner had issued less tickets worth Rs. 8-80 and Rs. 1-10 to the passengers and that on this report no preliminary enquiry was held and a charge-sheet is alleged to have been issued, which was never served or communicated to the petitioner, nor he was supplied with any gist of allegations and list of witnesses and that during the course of enquiry proceedings, he requested the Enquiry Officer to send for the advance checking vouchers but he did not do so, nor was he inclined to summon any witnesses in defence and that while passing the order of termination the General Manager did not take into consideration the explanation furnished by the petitioner and other procedural irregularities committed by the Enquiry Officer during the enquiry proceedings. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted in toto. It is alleged that the services of the petitioner were terminated on 18th April, 1983 after a valid and proper enquiry was held into the allegations of mis-conduct against the petitioner, in which, the petitioner was afforded full opportunity of participation and as such, order of termination passed against him was legal and valid.

4. On the pleadings of the parties, the following issues were settled for decision on 26th September, 1985 :—

(1) Whether a valid and proper enquiry was held by the respondent before terminating the services of the workman ? OPR.

(2) As per terms of reference.

5. The management examined MW-1 Shri Sunder Lal, Traffic Assistant and MW-2 Shri Rajbir Singh Traffic Manager, who conducted the domestic probe and the petitioner himself appeared as WW-1.

6. Authorised Representatives of the parties heard. My findings on the issues framed are as below :—

Issue No. 1:

7. The learned Authorised Representative of the petitioner has been successful in assailing the enquiry proceedings on many grounds. It is not on record that

the charge-sheet or the gist of allegations were ever served upon the petitioner or the contents of the same were ever communicated to him. This has been the grouse of the petitioner in reply to the final show cause notice given by him. So, no reply could be filed by the petitioner to the charge-sheet allegedly served upon him. During the course of domestic enquiry the petitioner requested the Enquiry Officer that the advance checking vouchers of the relevant date i.e. 17th September, 1981 be sent for from the respondent roadways but the same was not produced as it was not available. The Enquiry Officer did not impress upon the management to produce the said document, as the same was very material to prove the allegations against the petitioner or to prove his innocence. The Enquiry Officer without taking any firm steps believed the version of the respondent that the said document was not traceable. The charges against the petitioner are that he had issued the tickets of less values to four passengers on 17th September, 1983 while they were travelling in bus number 5242 on 17th September, 1982 from Hissar to Rajgarh. It is alleged therein that the fare charged by the petitioner was Rs. 28.00 from all the four passengers and that he had issued them tickets worth Rs. 19.20 and thereby embezzled a sum of Rs. 8.80. This very Inspector Sunder Lal when he appeared in the Court as witness as MW-1 stated that on that date checking was done by him. Actual fare from Hissar to Rajgarh was Rs. 8-80 per passenger. If, his version is believed then the petitioner is not only guilty of issuing tickets of less value after charging more money from the passengers but he was also guilty of wrongly assessing the fare from the said stand. That would mean that the Inspector, who did the checking of the bus was not even aware of the actual fare from Hissar to Rajgarh on that date. Another charge against the petitioner is that on the same date he had issued tickets worth Rs. 1-20 less than the actual fare to 1½ passengers. This is the allegation in the original report made against him. The number of passengers have been diluted from 1½ to one in the list of allegations served upon him. This means that the charges against the petitioner were absolutely vague and the management itself was not sure of their genuineness. Shri Rajbir Singh, Enquiry Officer,

who was examined in the Court as MW-2 stated that the tickets which were of less value issued to the passengers were calculated by the Inspector and appended with the complaint, but before the Enquiry Officer, Shri Sunder Lal Inspector, stated that he could not collect the tickets from the passengers. So, from the foregoing lacunas, infirmities pointed out, it is clear that the enquiry in this case was not fair and proper and in conducting the same the Enquiry Officer did not adhere to the principles of natural justice and that he failed to exercise his statutory duties to call for the most important document during the enquiry proceedings, which would have gone a long way in proving the innocence or guilt of the petitioner. So, this issue is answered against the management.

Issue No 2:

8. Issue No. 1 has already gone against the management. The enquiry report has been set aside not only on ground of procedural irregularities but also the fact that the management has failed to prove that the charge-sheet or gist of allegations were ever served upon the petitioner. The basis of the order of termination is the enquiry report, which has been nullified. So, the order of termination cannot be sustained being unlawful and as such, the same is set aside. The services of the petitioner were terminated on 18th April, 1983. Thereafter he went in appeal against the said order with the State Transport Controller, Haryana, Chandigarh, which was dismissed on 19th July, 1984. These facts are not disputed. The demand notice raised by him with the Labour Department is dated 7th April, 1984. So, the petitioner raised the demand notice within nine months of the dismissal of his appeal with the State Transport Controller. So, he cannot be denied the benefits of back wages and as such, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Presiding Officer,

Labour Court, Rohtak.

Dated the 27th June, 1986.

Endst. No. 3-85/1060, dated 5th August, 1986.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 18th August, 1986

No. 9/7/86-6Lab./5769.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Hissar.

**BEFORE SHRI B. P. JINDAL,
PRESIDING OFFICER,
LABOUR COURT, ROHTAK**

Reference No. 79 of 82

between

**SHRI ZORA SINGH, WORKMAN AND
THE MANAGEMENT OF HARYANA
ROADWAYS, HISSAR**

Present:

Shri Jagbir Singh, Authorised Representative for the management.
AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Zora Singh and the management of Haryana Roadways, Hissar, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/HSR/128/81/42644, dated 7th September, 1982:—

Whether the termination of services of Shri Zora Singh was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. This case of the petitioner as derived from the Claim Statement is that he was employed with the respondent as a Conductor about four years ago, whose services were terminated on 21st September, 1979 on the basis of trumped up allegations of misappropriation of money, in which, a farce of an enquiry was held and in conducting the same the Enquiry Officer gave a complete go-bye to the principles of natural justice, because in the same, the petitioner was not given complete opportunity of participation and that the Enquiry Officer did not consider the plausible defence offered by the petitioner and so, it is alleged that the order of termination on the basis of the findings of the Enquiry Officer is not legal and lawful and as such, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the claim petition is not maintainable in the present form and that the services of the petitioner were terminated after a proper and valid domestic probe, which plea may be tried as a preliminary issue and that this Court has no jurisdiction to adjudicate upon the present controversy. On merits, it is alleged that a complaint was received against the petitioner from the flying squad and explanation of the petitioner was called, which was not found satisfactory, upon which, a charge sheet was issued and the Traffic Manager was appointed as Enquiry Officer, who submitted his findings after conducting a fair domestic probe and thereafter order of termination was passed. It is further alleged that various pleas taken by the petitioner in the Claim Statement are not tenable.

4. On the pleadings of the parties, the following issues were settled for decision on 9th March, 1983:—

- (1) Whether the management has conducted a proper and fair enquiry ? If so, to what effect?
- (2) As per terms of reference.

5. Both the parties were allowed to produce their evidence. The management examined MW-1 Shri Ramesh Kumar, Clerk, MW-2 Shri Kuldeep Singh, Traffic Manager, who held the domestic enquiry, MW-3 Shri Krishan Pal, Adda Conductor, MW-4 Shri Bal Kishan, Inspector, along with Shri Krishan Pal checked the bus when the petitioner was found embezzling Government money. The workman examined Shri Bhan Singh, WV-1 and himself appeared as WW-2.

6. Authorised Representatives of the parties heard.

ISSUE NO. 1:

7. Contrary to the various pleas taken by the petitioner in his Claim Statement, the petitioner when he appeared in the Court as WW-2 admitted that during the course of enquiry proceedings statements of both the witnesses of the management, who conducted checking of the bus was recorded in his presence. He also admitted that he had put questions to them in cross-examination. He further admitted that he was given ample opportunity to offer his defence. He further stated that his statement made in the Court was correct and that the averments made in the Claim Statement were wrong. All these admissions of the petitioner are borne out from the enquiry proceedings, which has been placed on record in original. Beside affording adequate opportunity to the petitioner to adduce his defence, he was given complete opportunity to cross-examine the witnesses of the management. So, the learned Authorised Representative of the petitioner Shri Vats was on slender footing when he contended that the enquiry in the present case was not conducted within four corners of the often sanctified principles of natural justice. So, the procedure followed by the Enquiry Officer in this case was absolutely legal and regular and in conducting the same no prejudice was caused to the petitioner, though, this Court has its reservation about the findings recorded by the Enquiry Officer, which limb of the issue shall be taken up for discussion in the second issue. So, this issue to this extent goes in favour of the management.

ISSUE NO. 2:

8. Now, the question would be as to whether the findings recorded by the Enquiry Officer were fair and are substantiated from the evidence recorded by him during the enquiry proceedings. The allegations against the petitioner are that on 3rd June, 1979, the petitioner was Conductor on bus number 5151, which was on night duty and was bound from Delhi to Fazilka. The bus was over crowded because more than twenty-one passengers including two Inspectors S/Shri Bal Kishan and Krishan Pal were sitting on the roof of the bus. The only inference possible is that there was no sitting capacity inside the bus. It is alleged that twenty-one passengers alighted from the bus at Bus Stand Baropal. The Conductor charged the fare of more than Rs. 97 from them without issuing tickets and gave a whistle for the bus to start. Two Inspectors of the checking staff conducted a checking and caught the petitioner red handed committing misconduct of embezzlement. The defence offered by the petitioner is that since the bus was over crowded, he had not stopped bus at Baropal for issuing tickets to the passengers sitting on the roof of the bus and the said passengers were bound for Fatehabad and that when he was issuing tickets two Inspectors snatched the tickets from his hand and did not allow him to punch the same and in this situation a trumped up charge of embezzlement was made against him. In support of his version, he has examined one witness Shri Gopi Ram as WW-1. During the course of domestic enquiry also, this was the plea of the petitioner. So, the consistent stand of the petitioner is that he never intended to embezzle any amount as alleged and that the Inspectorate Staff whose duty was to assist him in collecting the Government revenue, acted in a *mala fide* manner in foisting a charge of misconduct against him. Shri Bal Kishan MW-3 stated that when the bus started from Hissar Bus Stand they sat on the roof of the bus un-noticed by the Conductor and that they knew that the passengers sitting on the roof of the bus had not been issued tickets. He further admitted and not denied by Shri Bal Kishan, who was examined as MW-4 that the Conductor

was in know that the Inspectorate Staff was sitting on the roof of the bus. Under these situation, it is difficult to believe that the Conductor will dare to indulge in any act of mis-appropriation of Government money knowing fully well that he cannot escape scot free. In this view of the matter the defence offered by the petitioner becomes plausible. This aspect of the mater was not considered by the Enquiry Officer or the punishing authority. Under these circumstances, the findings recorded by the Enquiry Officer were not correct and resultantly, the order of termination passed against him is unsustainable. So, interference by this Court under section 11-A of the said Act is called for. The workman is ordered to be reinstated. The benefit of back wages cannot be denied to the petitioner, because he raised the demand notice within less than two years of the date of termination. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.
The 5th June, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

Endorsement No. 179-82/854, dated 24th June, 1986.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.